



Senate Fiscal Agency
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BILL



ANALYSIS

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Senate Bill 666 (Substitute S-2 as reported)
 Sponsor: Senator Dave Honigman
 Committee: Human Resources, Labor and Veterans Affairs

Date Completed: 1-30-96

RATIONALE

The Michigan Employment Security Act specifies a number of different types of jobs or services that do not constitute "employment" as defined by the Act and, therefore, are not subject to the Act's provisions concerning unemployment compensation. It has been suggested that one more class of independent contractors--product demonstrators--be added to the list of exempted services. Reportedly, product demonstrators are individuals who, on a part-time, temporary basis, demonstrate or give away samples of food or other products as part of an advertising or sales promotion in a retail store. Generally, these individuals are not employed directly by the manufacturer, distributor, or retailer and apparently have not been considered to be employees under the Act. Since product demonstrators are not specifically exempt, however, some people believe that there may be confusion as to product demonstrators' status in relation to the payment of unemployment compensation benefits, and possibly some hesitation on the part of some employers to hire product demonstrators.

CONTENT

The bill would amend the Michigan Employment Security Act to exclude from the definition of "employment" service performed by an individual as a "product demonstrator" or "product merchandiser" under certain conditions. "Product demonstrator" would mean an individual who, on a temporary, part-time basis, demonstrated or gave away samples of a food or other product as part of an advertising or sales promotion for the product in a retail store and who was not otherwise directly employed by the

manufacturer, distributor, or retailer. "Product merchandiser" would mean an individual who, on a temporary, part-time basis, built or reset a product display in a retail store and who was not otherwise directly employed by the manufacturer, distributor, or retailer.

The exclusion would apply if the service were performed under a written contract between the individual and a person whose principal business was obtaining the services of product demonstrators and product merchandisers for third parties (i.e., manufacturers or brokers) for product demonstration and product merchandising purposes, and if, both in contract and in fact, the individual:

- Were not treated as an employee with respect to those services for Federal unemployment tax purposes.
- Were compensated for each job, or earned compensation based on factors that related to the work performed.
- Determined the method of performing the service.
- Provided the equipment used to perform the service.
- Were responsible for the completion of a specific job and liable for any failure to complete the job.
- Paid all expenses, and solely bore the opportunity for profit or loss.
- Were responsible for operating costs, fuel, repairs, supplies, and motor vehicle insurance.

MCL 421.43

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

By exempting product demonstrators from the definition of “employment”, the bill would make it clear that these independent contractors were not eligible for unemployment compensation benefits, and, therefore, their employers would not have to pay charges for them under the Michigan Employment Security Act. If product demonstrators were not excluded from the Act’s definition of “employment” and employers were required to pay unemployment compensation fees, the employers might have to increase their fees to their clients, thus risking a loss of assignments, especially from national marketing firms whose budgets are not flexible enough to adjust to price increases due to changes in state laws. Those assignments could then be given to companies in other states, putting Michigan at an economic disadvantage.

Opposing Argument

A similar bill (Senate Bill 9 of 1993-94) passed the Senate, but that bill included a prohibition against exclusive contracts between retailers and businesses that provide product demonstration services. To ensure the competitiveness of services provided by product demonstrators, this bill should include that prohibition.

Response: A prohibition against exclusive contracts could interfere with the rights of the retailer and demonstration broker under contract and business law. A prohibition also could induce some retailers simply to discontinue the demonstrations or have them performed by in-house staff, thus eliminating the jobs and workers that the bill addresses. Further, an exclusivity prohibition would burden the Michigan Employment Security Commission with the regulatory function of reviewing contracts to determine if an employment relationship existed due to the presence of an exclusivity agreement.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government. Since the tax for the coverage of product demonstrators has anticipated the likely need for future unemployment claims, there would be no impact on the Unemployment Insurance

Trust Fund. Contributions through this tax would no longer be required for employers of product demonstrators. Governmental units rarely employ individuals from this class of employees.

Fiscal Analyst: K. Lindquist

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.